

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5425 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

BHARUCH JILLA SAHAKARI DUDH UTPADAK SANG LTD

Versus

MADHUSUDAN P BHATT

Appearance:

MR NK MAJMUDAR for Petitioner

MR TR MISHRA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 28/07/2000

ORAL JUDGEMENT

The petitioner challenges the award of the Labour Court, Vadodara, dated 3rd April, 1989 in this petition filed under Article 227 of the Constitution of India. By that award, the petitioner whose services as Senior Clerk

were terminated, was ordered to be reinstated. His services were terminated by way of punishment after a Departmental enquiry, on the ground that he did not obey order of transfer. His grievance was that he was transferred to a lower post of Junior Clerk and therefore, he was not obliged to work in the lower cadre. He had remained absent from 16.9.80 upto 22.10.80 and for that intervening period, he was therefore not paid any salary, as stated by the learned Counsel, nor did he claim the same during the proceedings.

The Labour Court found that the workman who was a Senior Clerk could not have been transferred to work as a Junior Clerk. In fact, the Department's own witness Bhagwandas who was a Senior Clerk when asked whether in similar circumstances he would have been prepared to go and work as a Junior Clerk, has stated that he would not have worked in that lower cadre. The Labour Court found sufficient material to come to a finding that the order of transfer was malafide and that the respondent could not have been compelled to work in the lower cadre. It also noted that the enquiry proceedings were faulty because the delinquent was not given a copy of the findings of the enquiry officer. The Court also found that during the interregnum period after his dismissal, there was nothing to show that the employee had been employed elsewhere. It is for these reasons that the Labour Court set aside the order of his dismissal and directed his reinstatement with backwages. It is therefore, clear that the Labour Court has acted in lawful exercise of its jurisdiction on the basis of the material on record warranting no interference by this Court. This petition is therefore, rejected. Rule is discharged with no order as to costs. Interim relief stands vacated.

*/Mohandas